

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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<i>In re</i>	:
	:
THE FINANCIAL OVERSIGHT AND	:
MANAGEMENT BOARD FOR PUERTO RICO,	: PROMESA
	: Title III
as representative of	: Case No. 17-BK-3283 (LTS)
	: (Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO <i>et al.</i> ,	:
	:
Debtors. ¹	:
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**COFINA AGENT’S URGENT MOTION TO COMPEL THE
PUERTO RICO DEPARTMENT OF TREASURY TO COMPLY
WITH THE ORDERS SETTING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Bettina M. Whyte (the “**COFINA Agent**”), in her capacity as the appointed agent of the Financial Oversight and Management Board for Puerto Rico (the “**Oversight Board**”), as representative of the Puerto Rico Sales Tax Financing Corporation (“**COFINA**”), respectfully submits this urgent motion (the “**Motion to Compel**”), seeking entry of an order compelling the Puerto Rico Department of Treasury, as part of the Commonwealth’s central government (“**Hacienda**”), to pay all amounts due to the COFINA Agent and her professionals under the Interim Compensation Orders and the Second Interim Fee Period Order (each as defined below). In support of this Motion, the COFINA Agent respectfully states:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“**COFINA**”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“**HTA**”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“**ERS**”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“**PREPA**”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

1. At the omnibus hearing on June 6, 2018, counsel to the fee examiner disclosed to the Court that there were a number of professionals that had not received payments of amounts due under the Interim Compensation Orders.² The Court suggested that the parties try to resolve any non-payment provisions among themselves, but indicated that if the Court's assistance became necessary, parties should submit "an appropriate application to put the issue before me."³

2. It has now been almost six weeks since the Court's comments at that hearing, and the COFINA Agent and her retained professionals⁴ have still not received any payments on account of (i) several months of fees and expenses that are due and owing pursuant to the Interim Compensation Orders, or (ii) the "held back" amounts that were approved pursuant to the Court's *Omnibus Order Awarding Interim Allowance of Compensation for Professional Services Rendered and Reimbursement Of Expenses for the Second Interim Compensation Period From October 1, 2017 Through January 31, 2018* [Docket No. 3279] (the "**Second Interim Fee Period Order**"). The COFINA Agent Applicants have complied with all of the requirements of the Interim Compensation Orders, and no objections were filed to the fee and expense requests that are the subject of this Motion to Compel. There is no dispute that the fees and expenses are due and owing under the Interim Compensation Orders (all amounts that are due and owing to the COFINA Agent Applicants, the "**Past Due Amounts**").⁵

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the *Urgent Motion to Compel the Puerto Rico Department of Treasury to Comply with the First and Second Amended Orders Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* (the "**Retiree Committee Motion**") [Docket No. 3513].

³ Hearing Transcript, June 6, 2018, 41:16-17.

⁴ Willkie Farr & Gallagher LLP ("**WF&G**") is counsel to the COFINA Agent, Klee, Tuchin, Bogdanoff & Stern LLP ("**KTBS**") is special municipal bankruptcy counsel to the COFINA Agent, and the Navarro-Cabrer Law Offices are local counsel to the COFINA Agent ("**Navarro-Cabrer**," and together with the COFINA Agent, WF&G and KTBS, the "**COFINA Agent Applicants**").

⁵ An itemized schedule of the Past Due Amounts is attached hereto as Exhibit B.

3. Although the COFINA Agent Applicants have repeatedly discussed the non-payment of the Past Due Amounts with counsel to Hacienda, there have been no payments made for several months, and there has been no indication from counsel to Hacienda as to specifically when payments will be made. The COFINA Agent Applicants understand that the Court has many more pressing substantive matters in these title III cases, but the COFINA Agent Applicants reluctantly ask for the Court's assistance in resolving this matter because all non-judicial options have been exhausted.

4. Consistent with the Interim Compensation Orders, the COFINA Agent Applicants timely served monthly statements for their fees and expenses on Hacienda, the Oversight Board, and the other notice parties under the Interim Compensation Orders. (Interim Compensation Orders ¶ 2). No objections were received to these monthly fee statements, and the COFINA Agent Applicants served statements of no objection, and requested payment of the amounts due.

5. Pursuant to paragraph 2.c of the Interim Compensation Orders, following the expiration of the 10-day objection period to monthly fee statements, "the Debtors in whose cases such Professionals are retained and/or employed shall promptly pay, and in no event pay later than fourteen (14) calendar days after receiving the Monthly Fee Objection Statement, the Professional an amount equal to the lesser of (i) 90% of the fees and 100% of the expenses requested in the applicable Monthly Fee Statement." (Interim Compensation Orders ¶ 2.c).

6. Notwithstanding the requirements of the Interim Compensation Orders, and despite numerous requests for these payments by the COFINA Agent Applicants, Hacienda has not paid the Past Due Amounts. The COFINA Agent Applicants have worked in earnest with counsel for Hacienda to try to resolve this issue without motion practice, but have been

unsuccessful. For example, counsel to the COFINA Agent sent repeated e-mails to counsel for Hacienda to discuss the status of these outstanding payments, and counsel to Hacienda replied on June 13 that “AAFAF is working on the various COFINA fees,” and replied on July 18 “Will follow up (again) now,” but counsel to the COFINA Agent has not received any update. As another example, counsel for Hacienda promised KTBS an update on the status of their outstanding fees and expenses by June 20, but to date no update has been received, despite repeated requests by KTBS since June 20.

7. Separately, the COFINA Agent Applicants are also experiencing the same “erroneous withholding” described in the Retiree Committee Motion; Hacienda has applied a 29% withholding on its most recent payments to the COFINA Agent Applicants (the “**Tax Withholding**”),⁶ even though that tax only applies for work that is physically performed while located in Puerto Rico. Although the COFINA Agent Applicants have repeatedly certified that none of the fees and expenses at issue were incurred in Puerto Rico (except for Navarro-Cabrer, but Navarro-Cabrer is exempt from the 29% withholding because it is located in and doing business in Puerto Rico), the amounts that have been erroneously withheld have not been repaid.

8. The Tax Withholding is not applicable to the Past Due Amounts, and any such amounts that have been improperly withheld should be paid to the COFINA Agent Applicants promptly, and the fees and expenses that are yet to be paid must not have any Tax Withholding applied to them (unless work was performed while physically located in Puerto Rico).

⁶ For example, WF&G’s most recent payment from Hacienda was for its February fee statement, and it included a 29% withholding instead of the 10% “holdback” that is required by the Interim Compensation Order.

CONCLUSION

For the foregoing reasons, the COFINA Agent respectfully requests that this Court (i) enter an order, in substantially the form attached hereto as Exhibit A, requiring Hacienda to make payment of the Past Due Amounts (without any Tax Withholding) on or before July 31, 2018, and (ii) grant such other relief as may be just and proper.

Dated: July 16, 2018
New York, New York

Respectfully submitted,

By: /s/ Joseph G. Minias
Matthew A. Feldman (*pro hac vice*)
Joseph G. Minias (*pro hac vice*)
Antonio Yanez, Jr. (*pro hac vice*)
Martin L. Seidel (*pro hac vice*)
James C. Dugan (*pro hac vice*)
Jeffrey B. Korn (*pro hac vice*)
Paul V. Shalhoub (*pro hac vice*)
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111
Email: mfeldman@willkie.com
jminias@willkie.com
ayanez@willkie.com
mseidel@willkie.com
jdugan@willkie.com
jkorn@willkie.com
pshalhoub@willkie.com

Counsel to the COFINA Agent

By: /s/ Nilda M. Navarro-Cabrer
Nilda M. Navarro-Cabrer
USDC – PR No. 201212
NAVARRO-CABRER LAW OFFICES
El Centro I, Suite 206
500 Muñoz Rivera Avenue
San Juan, Puerto Rico 00918
Telephone: (787) 764-9595
Facsimile: (787) 765-7575
Email: navarro@navarrolawpr.com

Local Counsel to the COFINA Agent

Kenneth N. Klee (*pro hac vice*)

Daniel J. Bussel (*pro hac vice*)

Jonathan M. Weiss (*pro hac vice*)

KLEE, TUCHIN, BOGDANOFF & STERN LLP

1999 Avenue of the Stars

39th Floor

Los Angeles, California 90067

Telephone: (310) 407-4000

Facsimile: (310) 407-9090

Email: kklee@ktbslaw.com

dbussel@ktbslaw.com

jweiss@ktbslaw.com

*Special Municipal Bankruptcy Counsel
to the COFINA Agent*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re :

THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO, :

as representative of :

THE COMMONWEALTH OF PUERTO RICO *et al.*, :

Debtors.¹ :
----- X

PROMESA

Title III

Case No. 17-BK-3283 (LTS)

(Jointly Administered)

**ORDER GRANTING COFINA AGENT’S URGENT MOTION TO COMPEL THE
PUERTO RICO DEPARTMENT OF TREASURY TO COMPLY
WITH THE ORDERS SETTING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the motion for an order compelling Hacienda to pay all amounts due to the COFINA Agent and her professionals under the Interim Compensation Orders and the Second Interim Fee Period Order (the “**Motion to Compel**”); and the Court having found it has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA; and it appearing that venue is proper pursuant to section 307(a) of PROMESA; and the Court having found that the COFINA Agent provided adequate and appropriate notice of the Motion to Compel under the circumstances and that no other or further notice is required; and the Court having reviewed the Motion to Compel; and the Court having determined that the legal and factual bases set forth in the Motion to Compel establish just cause for the relief granted herein; and any objections to the relief

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requested in the Motion to Compel having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion to Compel is granted to the extent set forth herein.
2. Capitalized terms shall have the meanings ascribed to such terms in the Motion to Compel.
3. Hacienda must make payment of all Past Due Amounts (without any Tax Withholding) on or before July 31, 2018.
4. The Court retains jurisdiction to hear and determine all matters, claims and disputes arising from or relating to implementation of this Order.

Dated: _____, 2018
San Juan, Puerto Rico

Hon. Laura Taylor Swain
United States District Judge

EXHIBIT B

Schedule of Past Due Amounts

Professional	Period	Amount Unpaid and Outstanding (less the 10% holdback, if applicable)
COFINA Agent	March	\$115,852.77
	April	\$114,369.66
	May	\$83,851.18
	Second Interim Fee Period Order	\$16,094.50
WF&G	February	\$385,055.81 (erroneous Tax Withholding)
	March	\$1,814,388.00
	April	\$1,196,221.02
	May	\$626,261.37
	Second Interim Fee Period Order	\$501,912.39
KTBS	March	\$178,598.13
	April	\$225,687.25
	May	\$177,318.41
	Second Interim Fee Period Order	\$31,116.30
Navarro-Cabrer	March	\$1,486.20
	April	\$15,592.50
	May	\$17,206.30
	Second Interim Fee Period Order	\$9,516.25